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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/889,826	07/23/2001	Katsuki Ogawa	IWA-173-PCT	1426

7590

07/03/2003

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EXAMINER

OSTRUP, CLINTON T

ART UNIT

PAPER NUMBER

1614

DATE MAILED: 07/03/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/889,826

Applicant(s)

OGAWA ET AL.

Examiner

Clinton Ostrup

Art Unit

1614

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 16 June 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.
- NOTE: See Continuation Sheet.
3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☒ Newly proposed or amended claim(s) 12-14, 16, 18-24 and 31 would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: 12-14, 16, 18-24 and 31.

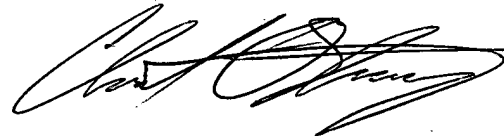
Claim(s) rejected: 2-8, 12-31.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The proposed drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_.

Continuation of 2. NOTE: The newly submitted claims have not placed the application in condition for allowance because they have not obviated the obviousness-type rejection of claims 2-8, 17, 25-31 and the amendment introduces new claim features which were not previously searched or examined.

Continuation of 5. does NOT place the application in condition for allowance because: Applicants' amendment has introduced claim limitations that were not previously searched or examined. Take for example, the solid lipstick formulation of claim 31 and the additional method steps of claim 25. Moreover, applicant has referred to claims not rejected over 35 U.S.C. 103(a) as being allowable, however, this is not the case. The examiner has rejected claims 2-8 and 13-31 over 35 U.S.C. 112, second paragraph and has rejected claims 1-8, 12-17, and 25-31 over 35 U.S.C. 103(a). Applicant has indicated confusion as to why these claims are rejected. First in regard to the 35 U.S.C. 112, second paragraph rejection, the examiner read the claims broadly as possible (i.e. with both the powder components and the aqueous components). However, this makes the claims unclear when considering the emulsification or hydrophobicity processes which would not be required if the powder components are dispersed with aqueous components. The prior art is applicable to the claims when they are read as powders dispersed with aqueous components, but the prior art does not read on the claims if they are drawn to powders dispersed in oil components, for claims 12-14 and 18-24. Thus, when applying art under 35 U.S.C. 103(a), again reading the claims as broadly as possible, if the emulsification or hydrophobicity process is not required, the process of Hockmeyer wherein powders are dispersed in solvents using an apparatus, reads on the claims.



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